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IN THE

Supreme Court of the United States

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

October Term, 1971

No. .....

JAMES SINCLAIR,

Petitioner,

vs.

GLORIA ELLA SPATOCCO, alias GLORIA E. REED, WALTER ROBERT SPATOCCO, alias WALTER ROBERT REED, and ELLA W. HANSEN,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

JAMES SINCLAIR,
16833 Livernois,
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Petitioner Pro Se.

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Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner James Sinclair prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit in the above entitled case.

Citations to Opinions Below.

The opinion of the Court of Appeals is reported at 452 F.2d 1213. The opinion of the District Court was unreported. There are printed *infra* in the Appendix the pertinent opinions, the judgment, and the order on rehearing.

Jurisdiction.

The judgment of the Court of Appeals was entered December 17, 1971, and the petition for rehearing filed within 14 days thereafter was denied February 23,

1972. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented for Review.

I.

May a Court of Appeals ignore a recent unanimous decision by this Court, and follow the old law to require action under "color of law" to establish a cause of action for conspiratorial deprivation of civil rights?

II.

May the right of jury as of 1791 be abridged except by the Constitution?

III.

Should a court decline jurisdiction of discipline over its bar?

IV.

May a Court of Appeals refuse to grant oral hearing of substantial questions?

V.

Were respondents liable under 42 U.S.C. §1983 by manipulating state officers?

VI.

Was the correct rule that citizenship may be altered by travel for a limited time and purpose?

VII.

Is it a sufficiently great departure from accepted and usual judicial proceedings and due process, on which to grant certiorari to supervise a lower court if: the reporter's transcript shows the trial court decided *only* on the evidence favoring one party, without even opening and reading the deposition of the other party?

Constitutional Provisions, Statutes, and Rules Involved.

42 U.S.C. §1985, "Conspiracy to interfere with civil rights", is printed *infra* Appendix page 6 because of its length.

The Seventh Amendment to the Constitution of the United States provides in pertinent part as follows:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, . . ."

Federal Rule of Appellate Procedure 34 and the Advisory Committee Note are printed *infra* Appendix page 8 because of their length.

42 U.S.C. §1983 reads as follows:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Statement of the Facts of the Case.

Federal jurisdiction in the District Court was based on (1) civil rights damages, (2) diversity of citizenship, (3) inherent jurisdiction over that court's bar, and (4) a substantial federal question.

The complaint alleged in details that defendants conspired to injure plaintiff's civil rights, and also manipulated a state official under color of California Penal

Code Section 415 (disturbing the peace) so to injure plaintiff. It was further alleged that plaintiff was a citizen of Michigan and defendants were citizens of California, and that the damages well exceeded $10,000.00. Discipline was sought against the defendant who was a member of the bar of the District Court for her acts of moral turpitude. Federal questions arose in the interpretations of civil rights statutes, the substantiality of which questions was shown by this Court's coincidental resolution of one in *Griffin v. Breckenridge*, 403 U.S. 88.

The basic fact of the action was that defendant Gloria Reed signed an appearance as plaintiff's attorney in another action. Upon the express representation that she had filed same and was his attorney of record, plaintiff paid her over $250.00. In fact the appearance had intentionally never been filed and plaintiff secured no value for, or refund of, his money. Under California law this constituted a felony, grand theft by false pretenses.

All three defendants were party to a conspiracy to secure and retain this money, and each performed overt acts in pursuance of the conspiracy. Mrs. Reed was a financially embarrassed newly admitted attorney.

The infringement of plaintiff's civil rights was much later entered upon by defendants to intimidate plaintiff and others in his class from exposing defendants' felony, and consisted of making false reports to the police that plaintiff had committed a crime. If plaintiff were afraid to appear in public because of the false

charges, he could not prosecute defendants. Plaintiff later passed a lie detector test and no criminal charges were pressed against him.

The District Court complaint alleged that plaintiff had been a party in a court of the United States (¶2, 42 U.S.C. §1985) and that defendants had conspired to deter him from attending said court.

The complaint alleged further violations of 42 U.S.C. §1985 by defendants, (1) to hinder the due course of justice in California to deny plaintiff equal protection of laws to: interstate travel, access to courts, freedom of speech, etc., (2) to injure him for lawfully attempting to enforce his right to said equal protection of the laws, (3) to hinder the police from giving plaintiff the equal protection of the laws, and (4) to deprive plaintiff of the aforesaid equal protection and equal privileges and immunities.

The District Court dismissed this complaint because it felt "color of law" was required to state a conspiracy civil rights cause of action, saying:

> "that case, in my judgment, does not control, the case that Mr. Sinclair is talking about, the recent Supreme Court case." (*Griffin v. Breckenridge*, 403 U.S. 88).

Defendants' answer denied the complaint's allegation that plaintiff was a citizen of Michigan. Subsequently defendants moved the District Court to dismiss the complaint on the grounds that all parties were citizens of California. Despite the complaint's and

plaintiff's demand for trial by jury, and sworn affidavit that plaintiff was a citizen of Michigan, the court denied a jury and itself decided that plaintiff was a citizen of California, and dismissed the complaint for lack of diversity.

The District Court's dismissal gave no reason for dismissing Count II of the complaint, which asked for disbarment from the bar of said court of defendant Gloria E. Reed for her demonstrated moral turpitude.

Finally, plaintiff contended that defendants had subjected him to civil rights deprivations under color of California Penal Code Section 415 (disturbing the peace) and custom and usage of California in their particular manipulation of a state officer, even though they were not state officials themselves, and that thus they were liable under 42 U.S.C. §1983; none of the courts below commented on this contention.

REASONS FOR GRANTING THE WRIT.

Question I.

This Petition appears to be the first requesting this Court to enforce on the lower courts the unanimous decision in *Griffin v. Breckenridge*, 403 U.S. 88, that "color of law" is not required by 42 U.S.C. §1985. It would appear as important to the Nation to enforce the decision as to render it in the first instance.

The opinion of the Ninth Circuit states:

> "Dismissal by the District Court was not error.
>
> Appellant's allegations against his attorney do not amount to violation of his civil rights, giving rise to federal jurisdiction under 42 U.S.C. §1985. Services performed by an attorney in connection with a lawsuit do not constitute action under color of state law. *Dyer v. Rosenberg*, 434 F.2d 648 (9th Cir. 1970)."

Obviously the Ninth Circuit still considers that "color of law" is required under 42 U.S.C. §1985, although it is a mystery why, since Petitioner as his premiere contention to that court cited *Griffin*, and in Petition for Rehearing in Banc re-cited *Griffin* saying that "it would appear that this Circuit cannot flout a unanimous new opinion of that Court".

The final mystery is that though plaintiff made no civil rights complaint about any attorney's services in a lawsuit, the Ninth Circuit thought that was plaintiff's complaint, instead of the months later actual false criminal charges by defendants in conspiracy.

Question II.

The right to trial by jury is an exceedingly important one. Its only purpose is to serve as a check on "one-man rule" by a judge, so it was made a part of the "Bill of Rights" in the 7th Amendment to the Constitution of the United States.

Any substantial claim to this Court that the jury right has been customarily infringed is of such importance to the Nation as to call for examination on certiorari. Even mandamus to a trial court has issued from this Court. *Ex parte Simons,* 247 U.S. 231. See *Beacon v. Westover,* 359 U.S. 500.

In the instant action, as an example of one-man rule, the District Judge decided plaintiff lied about his citizenship; the only appellate redress would be if the finding were "clearly erroneous", practically an impossibility. Pursuant to the decision, the judge clears a case off his docket. The unconscious incentive here is a denial of due process like in *Tumey v. Ohio,* 273 U.S. 510, 532 (judge's salary from fines), and many other cases.

How substantial is Petitioner's claim to a jury trial of the jurisdictional fact of his citizenship? This Court has stated that the jury right is as it existed at common law in England in 1791. *Baltimore v. Redman,* 295 U.S. 654, 657.

At common law there was not our concurrent federal court system with limited jurisdiction. But there were limited jurisdictions; one example of many was *Lampley v. Thomas* (1747), 1 Wilson 193, 206, 95 English Reports 568, 576.

The great rule of the common law was simply that facts were decided by juries and law by judges. *Bushell's*

Case (1670) (Vaughn 135, 124 English Reports 1006; 1 Freeman 1, 89 E.R. 2; T. Jones 13, 84 E.R. 1123) (*re* trial of William Penn) decided that a judge may not punish a jury to force it to render the decision *he* dictates, and a judge could no more achieve the same result by appropriating the power of a jury to himself than he could punish a jury.

A cause was decided on the merits or by abatement.

In 1791 England *required* jury trial on *abatement* factual questions:

> "The replication to pleas to the jurisdiction in general, commences with a statement that the writ ought not to be quashed, or that the court ought not to be ousted of their jurisdiction, because, &c. and concludes *to the country,* if the replication merely deny the subject matter of the plea." (Emphasis added and footnotes deleted) Page 432 [434] of A Practical Treatise on Pleading by Joseph Chitty, Edition Published in New York in 1809 from the English Edition.

Defendants alleged the District Court did not have jurisdiction because of factual lack of diversity, and your petitioner denied their allegation and claimed at all times his right to trial thereof by jury.

Two further English authorities are *Bonner v. Hall,* 1 Lord Raymond 338, 91 English Reports 1122; and *Eichorn v. Le Maitre* (1768), 2 Wilson 367, 95 English Reports 865. Therefore the Constitution protects plaintiff's right to trial by jury, under proper instructions by the court as to the law, on contested facts of jurisdiction.

This is plaintiff's great "right of trial by jury" to "be *preserved*" under the 7th Amendment, against all the subtle infringements proposed by enemies of our rights.

Of course there always was, 300 years ago as today, the duty of the court to dismiss an action when there appeared *without controversy* that the court lacked jurisdiction, but this did not authorize denial of trial by jury of controversy in fact.

American courts have, and properly so, given such common law procedure trial by jury in determining diversity jurisdiction:

Chicago N. W. v. Ohle (1886), 117 U.S. 123;
Jones v. League (1855), 59 U.S. 76;
Terry v. Davy, 107 Fed. 50;
McNello v. Kelly, 283 F.2d 96.

No appellate court has thus examined the 7th Amendment and decided that a court may itself decide a jurisdictional fact despite a 7th Amendment claim to trial by jury.

To be frank with the Court, petitioner must distinguish *Gilbert v. David*, 235 U.S. 561. There are three points. First, counsel for Gilbert appears to have invited error (Mr. Taylor in 59 L.Ed. 361 argued that the judge had the right to try the issue of fact, it appearing that defendant's motions for dismissal had been denied and a trial jury impaneled). Second, the Court's opinion is more consistent with a holding that as a matter of law a jury would have had to find on the evidence left by the deceased as the judge did, than it is with any claimed holding that the 7th Amendment permitted arbitrary refusal of a jury, especially since there was no argument or discussion of the 7th Amendment or common law. Third, the 1875 statute is repealed.

Question III.

The Chief Justice has said, as at other times:

> "A profession ought to be able to regulate itself, but the truth is that the legal profession has not done so. I suggest that the time has come when, if the legal profession wants to avoid regulation from the outside, it must sternly regulate itself from within."
>
> 57 A.B.A. Journal 857 (Sept. 1971).

Petitioner contends that the integrity of the Federal bar is a matter of great importance, and grant of certiorari and an order to the District Court to hear Count II of the complaint to determine whether or not defendant Gloria E. Reed should be disbarred on the substantial charges therein, corroborated by a lie detector report (Appendix page 4), would announce to the federal courts that the Chief Justice and the Court *are* concerned with the conduct of the bar and are not just paying lip service to professional standards.

Neither the District Court nor the Ninth Circuit gave a reason for dismissal of complaint Count II.

One authority for such discipline is *Wilbur v. Howard,* 70 F.Supp. 930. Another is Local Rule 1(j) of the United States District Court for the Central District of California, although there has existed no such committee in recent memory.

Question IV.

Just as this Court decided in the *Western Pacific Railroad* case, 345 U.S. 247, that the Ninth Circuit had erred in respect to its discretion in the uncharted field of rehearings *in banc,* Petitioner contends this Court should supervise the Circuit in respect to hearing

under F.R.A.P. 34. It is important to this Court to be informed of unsatisfactory performance of rules and lower courts. The Rule adopted by this Court provides for 30 minutes argument unless provided otherwise for classes of cases. The Circuit interprets this as giving it the right to have a panel read the briefs and record, and decide that a certain case should not be argued; this was done with the instant action.

Petitioner contends that a "class" of cases cannot be properly selected so subjectively—some objective standard at least should be set with a rational objective. What you have is a "class" of cases already decided by the screening panel; no counsel can write such a perfect brief as to foresee all the possible questions a panel might need to ask; and in the name of prejudged expediency the panel will suppress its proper curiosity and proceed to publish its opinion, they are only human.

More importantly, Petitioner contends that this Court meant by the Rule that parties had a right to some argument, to avoid the faceless, "1984", "Star Chamber" unconscious temptation to a panel to avoid its responsibility to the parties and its conscience, some give-and-take to demonstrate the temper of the court, that it is alive to the case and not senile. The Advisory Committee note (Appendix page 9) states:

> "the spirit of the rule that a reasonable time should be allowed for argument."

How this worked in this action appears that: defendants' counsel told the court in his motion to file his brief late that he would submit on the briefs, and the panel read the briefs and decided they did not want to hear plaintiff and notified him December 2,

1971 they would not hear argument. The opinion of December 17, 1971 being against plaintiff, it is obvious that that had been decided December 2, 1971 or earlier.

This Court itself feels that it should question counsel in order to arrive at a proper decision.

One vice of the Circuit's procedure is that the decision cited only 5 authorities, *4* of which were not briefed to the court and because of denial of argument plaintiff was not allowed to have a due process hearing on them. One of the authorities was even cited incorrectly before petitioner applied for rehearing and pointed it out. Plaintiff also objected to denial of argument to the panel.

Because of the psychological nature of human beings, one does not easily retract a written decision. Under *Armstrong v. Manzo,* 380 U.S. 545, 551-552 and notes 7 and 8, Petitioner contends that due process requires that he be placed in his position before decision, in front of a panel not emotionally bound to the decision, to argue whatever authorities the panel should bring up out of left field, and subtly to prod their attention to hard cases they would prefer to overlook if left alone.

A recommended procedure is followed in the Law and Motion Departments of the Los Angeles Superior Court: a *tentative* ruling is entered on the carbon copy of the calendar from the briefs, and counsel can accept it, or informedly and informatively argue the matter to a court that has psychological freedom to shift its ground (in the presence of the local bar waiting on their own cases). Psychologically such a public hearing produces better decisions, and more importantly, a better *appearance* of justice.

Petitioner is aware of the great press of business in the courts, but one cannot lose sight of justice for expediency or he fails in the very job he set out to do.

In conclusion petitioner contends that the panel abused its discretion in denying oral argument, in denying itself the opportunity to discuss the issues it felt decisive, all in the name of not having to spend 20 minutes in court at its own scheduling!

Question V.

At one time the courts uniformly held that a person could not be liable under 42 U.S.C. §1983 for depriving of civil rights if he were not some state official. The present rule is that a private person so acting in concert with a state official can be liable. *Adickes v. Kress,* 398 U.S. 144, 174.

Petitioner contends that there is an important question of federal law to all the Nation, that should now be decided under the simple wording of 42 U.S.C. §1983 to the effect that any private person who, using any state power of another, causes to be subjected any person to the loss of his rights, privileges or immunities secured by the Constitution and laws, is liable to said person.

For years 42 U.S.C. §1985 was tortured with the unwritten but judicially added requirement of "Color of law". Now *Griffin v. Breckenridge,* 403 U.S. 88, says the statute should be interpreted simply as written. It is time in this action to do as much for 42 U.S.C. 1983.

It is not necessary for there to be a state official maliciously injuring plaintiff, by the words of § 1983, so long as any individual makes guilty use of state power

(in place of personal force) to deprive a person of federal rights. Section 1983 is cast with laws in mind, not officials. Section 1983 derives from Sec. 5, Amendment 14, of the Constitution, and is for the purpose of avoiding acting directly on the States and their legislation by acting on individuals instead:

> "If we can deal with individuals, that is a less radical course, and works less interference with local governments . . ."
>
> *Griffin v. Breckenridge*, 403 U.S. 88, 101.

There is a comprehensive scheme for liability under §1983 for depriving of rights:

(1) Any innocent person "depriving" only because a law on its face requires "depriving", and

(2) any official using a neutral law (and his authority thereunder), beyond his rightful power, with the personal intent to "deprive", and finally,

(3) any person using a neutral law with the personal intent to "deprive", which deprivation he would be unable to accomplish without the aid or color of the law.

The latter two are examples of someone off on a lark of his own, and equally liable as there is no proper grounds for distinction for them. Reed did #3.

(1) *Adickes v. Kress*, 398 U.S. 144, 232-233;

(2) *Marshall v. Sawyer*, 301 F.2d 639, note 12 (9th Cir.);

(3) no citation available.

An attempt to prevent a civil action by a criminal prosecution is a deprivation of federal civil rights. *MacDonald v. Musick*, 425 F.2d 373; cert. den. 400 U.S. 852.

Question VI.

Defendants contended that plaintiff had never established factual domicile in Michigan and that he desires Michigan domicile for purposes of litigation.

However, there was no evidence that plaintiff had established his Michigan residence to sue defendants. He showed he left behind his family and civil service career in 1962 to move to Michigan, and did not even meet defendants until 1968. As late as 1965 he claimed California citizenship although still living in Michigan. By 1966 he finally resolved to make Michigan the place he always intended to return to and gave up any need or intent to return to California as he had hired an agent to wind up his affairs in California. Plaintiff actually informed his attorney, defendant Mrs. Reed, before he had any hint of any cause of action against her that he was a citizen of Michigan in a proposed settled record (appearing at page 1b in the Petition for Certiorari, *Sinclair v. Boughton,* No. 490, October Term, 1969), reciting something that had been first filed in 1966.

Since 1962 plaintiff has not worked in California, registered to vote in California, owned real estate in California, etc, and he filed all his income tax returns in Michigan. For the six years preceding the filing of the action his car had been registered in Michigan.

The scintilla of evidence that defendants presented to the District Court was that plaintiff did return to California only after his agent died and the replacement agent proved incompetent, and plaintiff secured a non-resident California drivers license at the address of his attorney when plaintiff's Michigan drivers license expired while he was in California. Plaintiff subse-

quently returned to Michigan and renewed his Michigan drivers license, although he had been in California for some 2 years winding up a lawsuit before he filed the instant action.

The District Court decided that plaintiff had not shown diversity of citizenship "by a preponderance of the evidence" and dismissed the complaint.

Petitioner contends that that court decided a federal question in a way in conflict with the decisions of this Court, and was affirmed therein by the Court of Appeals, and that it is therefore important to grant certiorari. This Court has decided that mere presence in a place on temporary business without an intent to remain permanently does not cause loss of prior domicile. *District v. Murphy,* 314 U.S. 441, and p. 455:

> "while the intention to return must be unconditional, the time may be, and in most cases of necessity is, contingent . . . one may not be visited with unwelcome domicile for lacking the gift of prophecy."

This Court has further decided that the burden of proof of a change of domicile lies not on plaintiff but on the defendants who have to show plaintiff regained California citizenship. *Texas v. Florida,* 306 U.S. 398 (note 15). *Spanos v. Skouras,* 235 F.Supp. 1 (notes 4 and 5)

In fact, this Court decided in *Wetmore v. Rymer,* 169 U.S. 115, 128, 122, that unless the record showed "a legal certainty" of *no* jurisdiction, a dismissal had to be *reversed.*

This may be harmonized with the rest of this area of the law by saying it means that if a judge on motion of himself or defendant decides a jurisdictional fact *against* jurisdiction, the record to sustain the decision must show lack of jurisdiction as a matter of law; if there is a factual question not clear as a matter of law and therefore to be decided by the trier of facts, it should be tried as any other fact at trial, by jury, or by court if jury is waived or if in equity or admiralty, etc. This practice is like summary judgment practice and would in no way enlarge the federal jurisdiction over that conferred by Congress—it *would* respect the 7th Amendment which cannot be infringed by the Congress.

It is unfortunate that the trial court did not empanel a jury and charge it properly as to the law to decide the issue properly, as plaintiff made formal demand for.

Question VII.

The reporter's transcript of the trial judge's decision states:

> "I conclude from the statements of Mr. Sinclair in his deposition that he has not established by a preponderance of the evidence that his citizenship or domicile was in Michigan." (the deposition was taken by defendants and in their brief to the trial court they, naturally, quoted the portions most favoring their attempt to disprove diversity)
>
> "I have read the portions of the deposition you cited. I don't have the deposition. It has been filed, I suppose, but I don't order it opened unless counsel request."

Due process certainly requires that a judge should hear and carefully and fairly consider the evidence and contentions of both parties. *Wetmore v. Rymer*, 169 U.S. 115, 122-3. It was carefully contended to the Court of Appeals that the trial judge abused his discretion in deciding the fact on his own admitted one-sided basis of defendants' quotations without considering plaintiff's sworn statements of domicile in Michigan in the deposition itself and in the court files, frankly evidence of pre-judging the issue and being blind to the existence of opposing evidence, as evidenced by that court's refusal to try the one issue to an indifferent jury. This overall appearance of prejudgment could not really thereafter be fairly cured by the same judge.

The Court of Appeals allowed this great departure from accepted judicial practice by saying only "the finding of the District Court that appellant was a citizen of California was not clearly erroneous". Even if it were "not clearly erroneous" (and petitioner contends it is clearly erroneous), parties in the federal courts are entitled to even-handed justice and a *trial* of each's evidence *before there can come into play* the appellate rule favoring the decider of fact until he be so wrong as to be wrong as a matter of law reachable by an appellate court. In other words, the trial court is required to exercise its discretion properly before the appellate court can say the decision is within the legal limits of discretion. As an example, a decision without notice or hearing, even if later found to be correct, could not stand.

For a review of this error of law by the Court of Appeals and its sanctioning the trial court to depart so far from the accepted and usual course of judicial proceedings, Petitioner prays this Court to grant certiorari.

Conclusion.

For the reasons stated above, considering the public importance of jury trial and courts conforming to Supreme Court decisions, and considering that the Court's power of supervision is properly called for by the great departure below from proper judicial proceedings, petitioner contends certiorari should be granted so that the judgments below may be vacated and the cause tried on all counts.

March, 1972.

Respectfully submitted,

JAMES SINCLAIR,
Petitioner Pro Se.

APPENDIX.

Opinion of the Ninth Circuit Court of Appeals.

In the United States Court of Appeals for the Ninth Circuit.

James Sinclair, Plaintiff-Appellant, vs. Gloria Ella Spatocco, alias Gloria E. Reed, Walter Robert Spatocco, alias Walter Robert Reed, and Ella W. Hansen, Defendants-Appellees. No. 71-1905.

Filed: Dec. 17, 1971.

On Appeal from the United States District Court for the Central District of California.

Before: MERRILL, BROWNING and CHOY, Circuit Judges.

Per Curiam:

Dismissal by the District Court was not error.

Appellant's allegations against his attorney do not amount to violation of his civil rights, giving rise to federal jurisdiction under 42 U.S.C. §1985. Services performed by an attorney in connection with a lawsuit do not constitute action under color of state law. *Dyer v. Rosenberg,* 434 F.2d 648 (9th Cir. 1970).

As to the remaining claims, the finding of the District Court that appellant was a citizen of California was not clearly erroneous. Accordingly, diversity of citizenship did not exist. Nor was it error to refuse to defer determination until the issue could be submitted to a jury. The trial court has discretion to determine the jurisdictional facts itself. *Har-Pen Truck Lines, Inc. v. Mills,* 378 F.2d 705 (5th Cir. 1967); *Seideman v. Hamilton,* 275 F.2d 224 (3d Cir. 1960). *See Gilbert v. David,* 235 U.S. 561, 568 (1915). *See also,* 5 J. Moore, Federal Practice §38.36 (1971). We find no abuse of discretion under the facts of this case.

Affirmed.

On Petition for Rehearing.

In the United States Court of Appeals for the Ninth Circuit.

James Sinclair, Plaintiff-Appellant, vs. Gloria Ella Spatocco alias Gloria E. Reed, Walter Robert Spatocco alias Walter Robert Reed, and Ella W. Hansen, Defendants-Appellees. No. 71-1905.

Filed: Feb. 23, 1972.

Before: MERRILL, BROWNING and CHOY, Circuit Judges.

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for a rehearing in banc.

The full court has been advised of the suggestion for an in banc hearing, and no judge of the court has requested a vote on the suggestion for rehearing in banc. Fed.R.App.P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing in banc is rejected.

Order Dismissing Complaint.

United States District Court, Central District of California.

Filed: Jan. 27, 1971.

James Sinclair, Plaintiff, vs. Gloria Ella Spatocco, Alias Gloria E. Reed, Walter Robert Spatocco, Alias Walter Robert Reed, Defendants. No. 69-397-EC.

The defendants' motion to dismiss the Amended Complaint came on before the Court for hearing on the

date and hour set, to wit, the 18th day of January, 1971, at 9:30 A.M. Plaintiff was present in propria persona and the defendants were represented by John K. Duncan, Esq. Points and authorities had been filed and the matter was argued.

It appears to the Court, from the pleadings, records, and other documents on file herein, including the deposition of plaintiff taken December 14, 1970, and from the showing made by the parties at said time and place, that the plaintiff herein is not a citizen of the State of Michigan but is domiciled in the State of California and was so domiciled at the commencing of this action and the plaintiff and defendants are not citizens of different states.

It further appears to the Court that the requisite diversity of citizenship between plaintiff and defendant does not exist and this Court is without jurisdiction of the subject matter of said action and the Amended Complaint on file herein fails to state a claim upon which relief can be granted under Sections 1983 and 1985, Title 42, United States Code, or otherwise.

IT IS ORDERED that the Amended Complaint be and it is hereby dismissed.

DATED: January 26, 1971.

/s/ E. Avery Crary
E. Avery Crary
United States District Judge

[Letterhead]

VIC COCHRAN
Detective Agency
6230 West 85th Place
Los Angeles, California 90045
(213) 776-1893

California Association
Polygraph Examiners
California Association
Licensed Investigators

5-12-70

TO WHOM IT MAY CONCERN:

On the above date I gave a polygraph (lie detector) exam to Mr. James M. Sinclair, 2980 Davison, Detroit, Michigan. The exam was given to Mr. Sinclair, at his request, to determine if he was truthful in the complaint he filed against Attorney Gloria Reed.

The exam was conducted at the above location with no one present except Mr. Sinclair and myself.

The exam was given on a Stoetling Polygraph, model #22500 which consists of three components measuring blood pressure-pulse, breathing and skin resistance.

During the exam all three indices were used. The following relevant questions were asked of Mr. Sinclair during the exam:

1. Are all the facts in the complaint you filed against Gloria Reed basically true? ANSWER — YES.
2. Did Gloria Reed tell you she was going to work for the City of Glendale? ANSWER — YES.

3. Did Gloria Reed state to you that she had filed the substitution of attorney? ANSWER — YES.
4. Did Gloria Reed approve of your final draft of a motion which you wrote? ANSWER — YES.

It is my opinion, based on the results of the exam, that Mr. Sinclair was TRUTHFUL in his answers to the above questions. The polygraph chart is available at this office for any interested parties.

Respectfully,

/s/ V. R. Cochran
V. R. Cochran

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1985. *Conspiracy to interfere with civil rights.*—First. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Second. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen

the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Third. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R. S. § 1980.)

Rules of Appellate Procedure.

Rule 34. Oral Argument.

(a) *Notice of Argument; Postponement.* The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) *Time Allowed for Argument.* Unless otherwise provided by rule for all cases or for classes of cases, each side will be allowed 30 minutes for argument. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary. Requests may be made by letter addressed to the clerk reasonably in advance of the date fixed for the argument and shall be liberally granted if cause therefor is shown. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) *Order and Content of Argument.* The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

(d) *Cross and Separate Appeals.* A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a cross-appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) *Non-appearance of Parties.* If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if his counsel is present. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order.

(f) *Submission on Briefs.* By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) *Use of Physical Exhibits at Argument; Removal.* If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the court room before the court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the court room unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

NOTES OF ADVISORY COMMITTEE ON AMENDMENTS TO RULES

A majority of circuits now limit oral argument to thirty minutes for each side, with the provision that additional time may be made available upon request. The Committee is of the view that thirty minutes to each side is sufficient in most cases, but that where additional time is necessary it should be freely granted on a proper showing of cause therefor. It further feels that the matter of time should be left ultimately to each court of appeals, subject to the spirit of the rule that a reasonable time should be allowed for argument.

The term "side" is used to indicate that the time allowed by the rule is afforded to opposing interests rather than to individual parties. Thus if multiple appellants or appellees have a common interest, they constitute only a single side. If counsel for multiple parties who constitute a single side feel that additional time is necessary, they may request it.

In other particulars this rule follows the usual practice among the circuits. See 3d Cir Rule 31; 6th Cir Rule 20; 10th Cir Rule 23.

Judgment.

United States Court of Appeals, for the Ninth Circuit.

James Sinclair, Plaintiff-Appellant, v. Gloria Ella Spatocco, alias Gloria E. Reed, Walter Robert Spatocco, alias Walter Robert Reed, and Elia W. Hansen, Defendants-Appellees. No. 71-1905.

APPEAL from the United States District Court for the Central District of California.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered December 17, 1971.